



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Robert A. Foley, Chair

Cynthia S. Bertocci  
Executive Analyst

Ruth Ann Burke  
Board Clerk

PAUL R. LEPAGE  
GOVERNOR

**Board of Environmental Protection  
Meeting Minutes**

**January 24, 2013**

A meeting of the Board of Environmental Protection was held on Thursday, January 24, 2013 at the Elks Lodge, 397 Civic Center Drive in Augusta, Maine. Robert Foley, Chair, called the meeting to order at 9:00 am with the following individuals:

**Board:**      Present: Alvin Ahlers, Thomas Eastler, Elizabeth Ehrenfeld, Robert Foley, Richard Gould, and Susan M. Lessard.  
Absent: Board member M. Wing Goodale was absent.

**Staff:**      Heather Parent, DEP Policy Director  
George MacDonald, DEP Sustainability Director  
Kerri Malinowski, DEP Sustainability Division  
Dr. Andrew Smith, State Toxicologist, Dept. of Health and Human Services

**Others:**      Patricia Aho, DEP Commissioner  
Cynthia S. Bertocci, BEP Executive Analyst  
Mary Sauer, Assistant Attorney General  
Ruth Ann Burke, Board Clerk and Administrative Assistant

## I. Departmental

- A. **Commissioner's Comments:** None
- B. **Comments from the BEP Chair:** None
- C. **Executive Analyst Comments:** None
- D. **Board Calendar:** Reviewed.
- E. **Departmental Orders/ applications accepted for processing:** None
- F. **Executive Session:** None

## II. Consent Agenda Items: None

## III. Regular Agenda Items:

1. Chapter 882: Designation of Bisphenol A as a Priority Chemical and Regulation of Bisphenol A in Children's Products / Citizen Petition for Rulemaking to Require Safer Alternatives to Bisphenol A in Food and Beverage Packaging for Young Children / Deliberative Session

Staff: Heather Parent, DEP Policy Director  
George MacDonald, DEP Sustainability Director  
Kerri Malinowski, DEP Sustainability Division  
Dr. Andrew Smith, State Toxicologist, Dept. of Health and Human Services

In response to direction received at the January 17, 2013 Board meeting, Department staff presented revisions to the proposed rule. Staff also presented the basis statement and response to comments.

Following discussion, a motion was made and seconded to provisionally adopt the following amendments to Chapter 882, section 5(A), Sales prohibition, with the clerical changes to grammar and sentence structure discussed (including correction of typographical errors in the basis statement and response to comments, and verification and correction if necessary of the summary of Comments #9 and #14 in the response to comments):

06-096 CMR Ch. 882

Section 5. Sales prohibition of children's products containing bisphenol A

- A. Sales Prohibition. Except as provided in section 1(B) of this chapter, no persons shall sell, offer for sale or distribute for sale in Maine any:

- (1) Reusable food or beverage container containing intentionally-added bisphenol A after January 1, 2012;
- (2) Infant formula packaging containing intentionally added bisphenol A in an amount greater than the de minimis level after March 1, 2014; and
- (3) Baby food packaging containing intentionally-added bisphenol A in an amount greater than the de minimis level after March 1, 2014.

The Board's motion was tabled to allow the Commissioner to state the manner in which she proposes to act on the petitioners' proposed amendments to the routine technical provisions of the rule.

For the purpose of allowing public comment prior to a decision, Commissioner Aho stated how she proposes to act on the routine technical provisions of the petitioners' proposed rule:

- Commissioner Aho proposes not to adopt the petitioner's proposed definition of toddler food. No definition is needed given that the Board is not enacting the proposed sales prohibition on the packaging of toddler food containing intentionally added bisphenol A, and the petitioners' definition as proposed is insufficiently clear to regulate toddler food.

- Commissioner Aho proposes not to adopt the petitioner's proposed amendments to the definition of intentionally added because the current definition is consistent with Maine law and sufficient for program administration. In addition, the current definition is appropriately comprehensive and provides for a case-by-case evaluation of regulated products.
- Commissioner Aho proposes to amend Section 5(B) Compliance Plan as stated below to substitute "children's product" for the proposed listing of each of the products subject to the compliance plan requirement:

B. "Compliance plan required. The manufacturer of a ~~reusable food or beverage container, infant formula, baby food or toddler food~~ children's product subject to the sales prohibition of subsection A shall file, or cause all of its distributors to file, a compliance plan with the department no later than 180 days prior to the effective date of a sales prohibition under this section, unless the manufacturer receives a time extension in writing from the department."

Following the Commissioner's statement, the Board and Commissioner accepted public comment pursuant to 38 M.R.S. § 341-H(3)(C). Two persons commented; neither requested a change to the Board's or the Commissioner's intended actions.

The Board then took up its motion and voted (6-0-0-1) to provisionally adopt the amendments to Chapter 882, Section 5(A) as stated above. The vote was taken pursuant to 38 M.R.S. § 341-H(1), 38 M.R.S. § 1696, and 06-096 CMR Ch. 882.

*Board members Alvin Ahlers, Thomas Eastler, Elizabeth Ehrenfeld, Robert Foley, Richard Gould and Susan Lessard voted to support the motion. Board member M. Wing Goodale was absent.*

Commissioner Aho then indicated that she will amend Section 5(B) as stated above pursuant to 38 M.R.S. § 341-H(2), 38 M.R.S. § 1696, and 06-096 CMR Ch. 882, but will not adopt the petitioners' other proposed routine technical amendments to the rule.

***(The meeting adjourned at approximately 10:00 a.m.)***

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*Next Meeting – Thursday, February 7, 2013, Florian Hall,  
Department of Public Safety, 45 Commerce Drive, Augusta*